

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2019**

No. 21

Introduced by Council Members Cumbo, Ampry-Samuel, Rivera, Lander, Kallos, Rosenthal, Lancman, Chin and Miller.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to requiring the department of correction to report on sexual abuse

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 9 of the administrative code of the city of New York is amended by adding a new section 9-156 to read as follows:

§ 9-156 Sexual abuse reporting. a. Definitions. For purposes of this section, the following terms have the following meanings:

Correctional health authority. The term “correctional health authority” means the entity responsible for the delivery of health and mental health services to inmates in the custody of the department.

Facility investigation. The term “facility investigation” means any investigation of an incident conducted by staff within a departmental facility but does not include an investigation conducted by the investigation division.

Gender non-conforming. The term “gender non-conforming” describes a person who presents in a way that does not conform with traditional gender expectations.

Investigation division. The term "investigation division" means any departmental unit responsible for investigating allegations of staff misconduct.

Non-binary. The term "non-binary" describes a person who does not identify as male or female.

Sexual abuse. The term "sexual abuse" includes sexual abuse of an incarcerated individual by staff or sexual abuse by an incarcerated individual.

Sexual abuse by staff of an incarcerated individual. The term "sexual abuse by staff" includes any of the following acts conducted by staff, with or without consent of the incarcerated individual, including when such acts occur during the course of an otherwise authorized search procedure: (1) contact between the penis and the vulva or the penis and the anus, including penetration, however slight; (2) contact between the mouth and the penis, vulva, or anus; (3) contact between the mouth and any body part where the staff member has the intent to abuse, arouse, or gratify sexual desire; (4) penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument; (5) any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks where the staff member has the intent to abuse, arouse, or gratify sexual desire; and (6) any attempt to engage in the acts described in paragraphs (1) through (5) of this definition.

Sexual abuse by an incarcerated individual. The term "sexual abuse by an incarcerated individual" includes any of the following acts if the victim and perpetrator are both incarcerated individuals, and if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse: (1) contact between the penis and the vulva or the penis and the anus, including penetration, however slight; (2) contact between the mouth and the penis, vulva, or anus; (3) penetration of the anal or genital opening of another person, however

slight, by a hand, finger, object, or other instrument; and (4) any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

Sexual harassment. The term “sexual harassment” includes (1) any unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature; and (2) any verbal comments or gestures of a sexual nature, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

Staff. The term “staff” means an employee who works directly for the department.

b. Within 90 days of July 1, 2019 and every six months thereafter, the department shall provide to the speaker of the council and the board of correction a report of alleged incidents of sexual abuse and sexual harassment for which an investigation lasted longer than 90 days that occurred during the preceding six-month period, provided that the information required in paragraphs 14 through 25 of this subdivision need not be included in such reports until the report due within 90 days of July 1, 2021. All data shall be reported in a format capable of automated processing. Such report shall include the following information for each allegation of sexual abuse and sexual harassment:

1. The date on which the incident occurred and whether the incident took place between the times of 7:00 AM and 3:00 PM, 3:00 PM and 11:00 PM, and 11:00PM and 7:00 AM;

2. Whether the allegation is of sexual abuse or sexual harassment as defined in subdivision a of this section;

3. The date the incident was reported and an investigation was opened;

4. The gender of the alleged victim;

5. *Whether the alleged victim at the time of the incident was between the ages of 18-25, 26-35, 36-40, 41-60, over 60, or under 18 when such individuals are in department custody;*
6. *The race and ethnic origin of the alleged victim;*
7. *Whether the alleged victim had been in custody for more than 24 hours and who, during such confinement, received treatment for a mental illness, not including incarcerated individuals seen by mental health staff on no more than two occasions during their confinement and assessed on the latter of those occasions as having no need for further treatment in any city correctional facility or upon their release from any such facility;*
8. *The gender of the alleged perpetrator;*
9. *Whether the alleged perpetrator was an incarcerated individual or staff;*
10. *If the alleged perpetrator was staff, the number of previous allegations against the staff that were substantiated and the outcome of each investigation;*
11. *If the alleged perpetrator was staff, the number of previous allegations against such staff that were unsubstantiated;*
12. *If the alleged perpetrator was staff, the number of previous allegations against such staff which are still pending;*
13. *The facility in which the incident occurred;*
14. *Whether the incident occurred in a service area or housing area;*
15. *If the incident occurred in a housing area, the housing area type;*
16. *Whether video camera surveillance recorded the incident;*
17. *The type of sexual abuse or harassment as defined in subdivision a of this section;*
18. *Whether the alleged victim is known to identify as transgender or intersex;*
19. *Whether the alleged victim is known to identify as non-binary or gender non-conforming;*

20. *Whether the alleged victim is known to identify as lesbian, gay or bi-sexual;*
21. *Whether DNA or any other physical evidence was obtained;*
22. *Whether a rape kit was administered, declined or not applicable;*
23. *If a rape kit was deemed not applicable, whether that determination was the result of a delay in reporting, due to the type of abuse alleged to have occurred, or any other reason;*
24. *Whether a sexual assault nurse examiner or sexual assault response team was present during the administration of a rape kit; and*
25. *Whether the case was referred to the department of investigation, the date of such referral, and whether the department of investigation referred it back to the department of correction to investigate.*

c. Within 90 days of July 1, 2019, and every six months thereafter, the department shall report to the council and the board of correction a report of investigations of allegations of sexual abuse and sexual harassment that concluded during the preceding six-month period, provided that the information required in paragraphs 14 through 25 of subdivision b and paragraphs 8 through 11 of this subdivision need not be included in such reports until the report due within 90 days of July 1, 2021. All data shall be reported in a format capable of automated processing. Such report shall include the following information in addition to the information in paragraphs 1 through 25 of subdivision b of this section:

1. *The date the investigation was opened and closed;*
2. *Whether the department determined that the incident was substantiated, unsubstantiated, or unfounded;*

3. *Whether the allegation was referred to a district attorney's office and whether that district attorney's office declined to prosecute, and whether the alleged perpetrator was convicted during the reporting period;*

4. *Whether the investigation was conducted by the facility or by the investigation division;*

5. *Where an investigation was referred to the investigation division, the reason for such referral;*

6. *Whether the investigation was referred back from the investigative division to the department facility and the reason for such referral;*

7. *Whether the alleged victim was notified regarding the outcome of the investigation;*

8. *Whether the alleged victim was referred to trauma or rape crisis services following the incident and if the victim accepted or declined such services while in custody;*

9. *Whether the alleged perpetrator and alleged victim were separated from physical contact during pendency of the investigation;*

10. *For substantiated allegations, if the perpetrator was a staff person, whether during the pendency of the investigation such staff person resigned, was suspended, placed on modified duty, assigned to a post without contact with incarcerated individuals, assigned to a post with restricted contact with incarcerated individuals, placed on administrative leave, or administered any other form of discipline;*

11. *For substantiated allegations, whether the allegation was referred for disciplinary action, including whether the department declined to file disciplinary charges, or if disciplinary charges were filed, the outcome of such disciplinary proceeding and whether the alleged staff perpetrator resigned or retired in lieu of charges or as part of a negotiated plea.*

d. Within 90 days of July 1, 2019, and every six months thereafter, the department shall post on its website the information required in subdivisions b and c of this section in the aggregate, including the number and percentage of each data point, provided that such information that cannot be aggregated need not be included in such report. Such aggregated reports shall include the number of cases pending for over 90 days. Such reports shall be stored on the department's website for at least ten years.

e. Unless otherwise precluded by law, the correctional health authority shall assist the department in collecting the data enumerated in subdivisions b and c of this section.

f. The department shall review this incident data in order to assess and improve the effectiveness of its sexual abuse and sexual harassment prevention, detection, and response policies, practices, and training by identifying problem areas and trends, taking corrective action on an ongoing basis and providing a semiannual assessment report to the council on its findings and corrective actions for each facility, as well as the department as a whole. Such semiannual assessment report shall also review the need for policy and practice changes, assess whether vulnerable populations are particularly at risk and review whether staffing levels are adequate, whether investigation practices need to be revised and whether monitoring technology needs to be deployed or improved. Such semiannual assessment report shall include a comparison of the current six months' data and corrective actions with those from the prior six months and shall provide an assessment of the department's progress in addressing sexual abuse and sexual harassment. Such a report shall be provided to the public and to the speaker of the council within 90 days following the end of each reporting period starting on July 1, 2019 and every six months thereafter.

g. The department shall ensure that all data collected pursuant to this section is securely retained, and shall retain such data indefinitely after the date of the initial collection unless federal or state law requires otherwise.

h. The department shall report the information required pursuant to this subdivision notwithstanding any other provision of local law. Before making data collected pursuant to this section available to the speaker of the council, board of correction, and the public, the department shall remove an individual's name, all personal identifying information as defined by subdivision (a) of section 10-501, and any other information the disclosure of which would violate any federal or state laws.

§ 2. This local law takes effect immediately.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on December 20, 2018 and returned unsigned by the Mayor on January 24, 2019.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 21 of 2019, Council Int. No. 933-B of 2018) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council, presented to the Mayor and neither approved nor disapproved within thirty days thereafter.

STEVEN LOUIS, Acting Corporation Counsel.